IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4062 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KASRABHAI HIRABHAI - Petitioner(s)

Versus

RATNABHAI BHAIJIBHAI & 4 - Respondent(s)

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Appearance :

MR JC SHETH for Petitioner(s) : 1,
MR PM THAKKAR for Respondent(s) : 1 - 4.
NOTICE UNSERVED for Respondent(s) : 5,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 26/09/2005

ORAL JUDGMENT

1.In this petition under Article 227 of the Constitution of India, the petitioner has challenged the legality and validity of the judgment and order passed by the

Additional Chief Secretary (Appeals), Revenue Department, State of Gujarat dated 26.10.89 passed in Revision Application No. SRD 3/87 in dismissing the same and confirming the order passed by the Dy. Collector, Dahod dated 31.7.87 passed under Section 9 of the Bombay Prevention of Fragmentation Act (hereinafter referred to as 'The Act') and directing the petitioner to vacate from the land in question.

2. The dispute is with regard to the land bearing Survey No.62/1 situated at village Nalu, Taluka Limkheda which was owned by Bai Bhatli daughter of Khuman Sundar and the said land was mortgaged with the petitioner and proceedings were initiated by the Dy. Collector, Dahod under Section 9 of the Act by issuing Notice in the year, 1987 and the Dy. Collector, Dahod held that the said transfer is in breach of Section 7 of the Act and therefore, passed an order under Section 9 of the Act declaring the said transfer as invalid in breach of Section 9 of the Act and further passed an order under Section 9(3) of the Act directing the petitioner to vacate from the land in question. Being aggrieved and dissatisfied with the order passed by the Dy. Collector, Dahod dated 31.7.87 passed under Section 9 of the Act, the petitioner preferred Revision

Application before the Additional Chief Secretary (Appeals), Revenue Department, State of Gujarat being Revision Application No. SRD 3/87 and the same came to be dismissed by the Additional Chief Secretary (Appeals), Revenue Department, State of Gujarat by its judgment and order dated 26.10.89. Being aggrieved and dissatisfied with the judgment and order passed by the Additional Chief Secretary (Appeals), Revenue Department, State of Gujarat dated 26.10.89 passed in Revision Application No. SRD 3/87 in dismissing the same and confirming the order passed by the Dy. Collector, Dahod dated 31.7.87 passed under Section 9 of the Act, the petitioner has preferred the present Special Civil Application under Article 227 of the Constitution of India.

3. It is the contention on behalf of the petitioner that the petitioner and the original land owner are the brothers and sisters and he is in possession of the disputed land since 1970 and the same is also reflected in the Village Form No.7/12 since 1970-71 and the proceedings came to be initiated after a period of 16 years under Section 9 of the Act. In this set of facts, relying upon the judgment of the Division Bench of this Court in case of Valjibhai V/s. State of Gujarat

reported in 2005(2) GLH. P.34, it is requested to allow the present Special Civil Application.

4. It is the contention on behalf of the respondents that as the transfer was illegal and/or nullity from the very beginning, merely because the action was not taken within a reasonable time, it will not invalidate the entire proceedings and therefore, it is submitted that both the authorities below have rightly declared the transfer invalid and in breach of the provisions of Section 7 of the Act and therefore, it is requested to dismiss the present Special Civil Application.

5. It is not in dispute that the petitioner is in possession of the land in question since 1970-71 and even the same is also reflected in the revenue record since 1970-71 in the Village Form No.7/12. Therefore, it is clear that the authorities were aware of the said transaction since 1970-71 and/or they are supposed to know the same. It is also not in dispute that proceedings came to be initiated by the Dy. Collector in the year 1987 i.e. after a period of 16 years. Relying upon the judgment of the Hon'ble Supreme Court in case of ***Mahmad Kavi Mohmad Amin V/s. Fatmabai Ibrahim reported in 1997(6) SCC P.71*** and other

judgments of the Hon'ble Supreme Court as well as of this Court, the Division Bench of this Court in case of ***Valjibhai Jagjivanbhai V/s. State of Gujarat reported in 2005(2) GLH. P.34*** has held that even in a case where the transaction is nonest and/or nullity, the authorities are required to exercise the powers within the reasonable time and if the powers are not exercised within the reasonable time, the same is not permissible. In view of the above and keeping in mind, the judgment of the Division Bench of this Court which is relying upon the judgment of the Hon'ble Supreme Court, exercise of powers by the Dy. Collector, Dahod under Section 9 of the Act after a period of 16 years cannot be said to be exercised powers within a reasonable time and therefore, the same was not permissible. Considering the aforesaid facts, the Additional Chief Secretary (Appeals), Revenue Department, State of Gujarat ought not to have dismissed the said revision application.

6. For the reasons stated above, the petition succeeds. The judgment and order passed by the Additional Chief Secretary (Appeals), Revenue Department, State of Gujarat dated 26.10.89 passed in Revision Application No.SRD 3/87 as well as the order passed by the Dy.

Collector, Dahod dated 31.7.87 in declaring the transfer in favour of the petitioner invalid under Section 9 of the Act are hereby quashed and set aside.

7.Rule is made absolute to the aforesaid extent, however, there will be no order as to costs.

(M.R.SHAH, J.)

kdc.